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TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Pendleton C. Waugh, et al.

EB Docket No. 07-147

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

PREHEARING CONFERENCE

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IN THE MATTER OF:	: EB Docket No.
	: 07-147
PENDLETON C. WAUGH,	:
	: File No.
CHARLES M. AUSTIN,	: EB-06-IH-2112
	:
and JAY R. BISHOP	: NAL/Acct. No
	: 200732080025
PREFERRED COMMUNICATION	:
SYSTEMS, INC.	:
	:
Licensee of Various	: FRN No.
Site-by-Site Licenses in	: 0003769049
the Specialized Mobile	:
Radio Service.	:
	:
PREFERRED ACQUISITIONS, INC.:	:
	:
Licensee of Various	: FRN No.
Economic Area Licenses in	: 0003786183
the 800 MHZ Specialized	:
Mobile Radio Service	:
	:
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Wednesday,
September 9, 2009

Volume 4

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20054

BEFORE:

RICHARD L. SIPPEL
Chief Administrative Law Judge

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Also Present:

Mary Gosse
Gary Schonman

P-R-O-C-E-E-D-I-N-G-S

(9:40 a.m.)

MS. SINGH: -- Ms. Singh and with me is Gary Oshinsky.

JUDGE SIPPEL: Okay, Mr. Oshinsky, Ms. Singh. And I see Mr. Schonman is in the - - also attending, I guess. Is that right, sir?

MR. SCHONMAN: As a spectator.

JUDGE SIPPEL: As a spectator, well, okay. And Mr. Silva is supposed to be here, but we do have, we do have two gentlemen on the phone. Is that correct? Do I have to, do I have to do something?

MS. GOSSE: They're already there.

JUDGE SIPPEL: Can everybody -- can you all hear me?

MR. AUSTIN: Yes, your Honor.

JUDGE SIPPEL: Okay. And let me find out -- just give me your appearances too, please. In other words, tell me who you are and what you're representing.

1 MR. AUSTIN: Yes, hi. This is
2 Charles Austin. I represent myself and
3 Preferred Communications.

4 JUDGE SIPPEL: Thank you.- Okay.

5 MR. GUSKEY: This is Charles
6 Guskey, spelled G-U-S-K-E-Y, and I'm a vice
7 president for Preferred, and in here
8 representing Preferred in addition to Mr.
9 Austin.

10 JUDGE SIPPEL: Okay. Is there a
11 counselor or you all just representing as
12 principals?

13 MR. GUSKEY: As principals, your
14 Honor.

15 JUDGE SIPPEL: Got it, okay. All
16 right. And you all are, but you all are not -
17 - you're trying to intervene as parties, but
18 you're not parties. Is that correct?

19 MR. OSHINSKY: Your Honor, --

20 JUDGE SIPPEL: I'm wrong, huh.

21 MR. OSHINSKY: Yes. They actually
22 -- Mr. Austin is individually a party and he

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1 represents the Preferred Communications and
2 they are also a party. And Mr. Guskey works
3 for Mr. Austin, so they are --

4 JUDGE SIPPPEL: Okay, I hear you.

5 MR. OSHINSKY: Okay.

6 JUDGE SIPPEL: All right. You'll
7 have to bear with me because there's been a
8 lot happening in the last 24 hours with emails
9 and what not. And I also received a, let me
10 see, there was -- yes, Mr. Judy was the one
11 that was appealing.

12 He wants to intervene and he
13 withdrew his appeal it looks like, but then
14 Mr. Silva filed an appeal primarily as I read
15 it to protect himself, to protect the record,
16 but when I -- I'm not going to get into that
17 today.

18 Let me start with asking Bureau
19 counsel, what can we, what can we accomplish
20 right now without Mr. Silva here? And again,
21 I'm not going to make any decisions, but is
22 there some business that we can conduct?

1 MS. SINGH: Yes, I believe so, your
2 Honor. We could, if you'd like, recite how we
3 got to the stage that we're in in this
4 proceeding at this point if it would benefit
5 you or the record.

6 JUDGE SIPPEL: Yes, it would. I
7 would, but just, yes, just a summary of, of
8 what it is. And you may sit down if you care
9 to, wherever you are comfortable doing.

10 MS. SINGH: Thank you, your Honor.

11 JUDGE SIPPEL: Thank you.

12 MS. SINGH: On behalf of the
13 Bureau, I just wanted to describe for you some
14 of the events that have led to today's influx
15 of a half a dozen issues ready for your ruling
16 and 22 pleadings. I've prepared a list for
17 your Honor, if I may approach the bench.

18 JUDGE SIPPEL: You may. That would
19 be very helpful. That's fine. Thank you.

20 MS. SINGH: As some of the parties
21 that are here today can attest as well, we
22 started off this hearing with two licensees

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1 and three individuals that are named in the
2 caption of the order to show cause that
3 initiated the hearing. They are, for the
4 record, Preferred Communication Systems, Inc.,
5 or PCSI, Preferred Acquisitions, Inc., or PAI.

6 Collectively, we sometimes refer
7 to these entities as Preferred, and those are
8 the entities that are represented by Mr.
9 Guskey and Mr. Austin on the line today.
10 Additionally, Mr. Charles Austin, who's on the
11 line today, is one of the captioned parties.
12 He is a principal on behalf of Preferred.

13 JUDGE SIPPEL: Okay.

14 MS. SINGH: And then we also have
15 Mr. Pendleton Waugh, who we understand will be
16 represented by counsel today.

17 JUDGE SIPPEL: He'll be represented
18 with Mr. Silva has been considerable --
19 pleadings filed by Mr. Silva, so --

20 MS. SINGH: Yes.

21 JUDGE SIPPEL: Okay.

22 MS. SINGH: Absolutely, your Honor.

1 We also have Mr. Jay Bishop, who is another
2 individual named in the caption of the order.
3 We understand that he does not plan on
4 participating today. And just for your future
5 reference, your Honor, he thus far hasn't
6 participated in proceedings, but Mr. Austin,
7 due to a personal relationship with Mr.
8 Bishop, has conveyed much of the information
9 that's been going on to him to the extent that
10 that's not available through public filings.

11 And, Mr. Austin, feel free to
12 please correct me if I'm wrong in that
13 understanding.

14 JUDGE SIPPEL: Did you hear that,
15 Mr. Austin?

16 MR. AUSTIN: Yes, I've got that,
17 and I will.

18 MS. SINGH: Thank you.

19 JUDGE SIPPEL: Do you agree with
20 what Ms. -- do you agree with what Ms. Singh
21 has been saying about that though as of this
22 point?

1 MR. AUSTIN: Yes, I do.

2 JUDGE SIPPEL: Thank you.

3 MS. SINGH: Thank you, Mr. Austin.

4 And, your Honor, if I may
5 continue?

6 JUDGE SIPPEL: Sure, please, go
7 ahead.

8 MS. SINGH: Thank you. The two
9 wireless licensees that are here today
10 represented by Preferred, by Mr. Guskey and by
11 Mr. Austin, apparently do not have counsel,
12 but in the beginning they did. And we
13 designated this hearing and conducted months
14 of discovery followed by depositions which
15 took place in January.

16 The principle issues that were
17 designated for a hearing concern a few key
18 issues. One is unauthorized transfer of
19 control as alleged in the order to show cause.
20 The allegations are that Preferred through
21 both a stock transfer to Mr. Waugh, as well as
22 through control over Preferred's day-to-day

1 affairs, may have transferred control to Mr.
2 Waugh.

3 JUDGE SIPPEL: There was actually a
4 transfer of stock?

5 MS. SINGH: Actually, that's a
6 matter of contention in the record, your
7 Honor, and I'd prefer not to --

8 JUDGE SIPPEL: Go ahead.

9 MS. SINGH: -- get into it, but
10 there is record evidence suggesting that there
11 was a stock transfer and I believe that that
12 is disputed.

13 JUDGE SIPPEL: All right.

14 MS. SINGH: I'm just reciting for
15 you what the order to show cause says as a
16 background for you.

17 JUDGE SIPPEL: No, I appreciate
18 that.

19 MS. SINGH: Thank you, your Honor.

20 JUDGE SIPPEL: Go right on.

21 MS. SINGH: And, and there is also
22 an allegation concerning a potential stock

1 transfer to Mr. Bishop.

2 MR. GUSKEY: I'm sorry to
3 interrupt. This is Mr. Guskey.

4 JUDGE SIPPEL: Go ahead.

5 MR. GUSKEY: Just as a footnote
6 since you're walking through the chronology of
7 things. In regards to the stock transfer,
8 Preferred's position is that it was never
9 transferred, and separately, Mr. Waugh, in his
10 deposition, and as well in sworn affidavits,
11 has indicated that the stock was never
12 transferred as well.

13 So, I know Ms. Singh indicated
14 that it was in dispute, but I just wanted to
15 footnote and give Preferred's position and
16 also Mr. Waugh by virtue of his deposition, as
17 well as his sworn affidavit.

18 MS. SINGH: That's correct, and
19 thank you, Mr. Guskey. Just to clarify for
20 the record, these are not necessarily
21 allegations that the Bureau is arguing in
22 substance. This is just for the judge's

1 background as to what the order says.

2 JUDGE SIPPEL: Yes, I'm just
3 receiving this as a status report, but do, do,
4 you know, do interject when that, something
5 like that comes up because that is important.

6 MR. GUSKEY: Thank you, sir.

7 JUDGE SIPPEL: Yes. Go ahead.

8 MS. SINGH: Thank you, your Honor.
9 And the reason that these stock transfers or
10 the transfer of control over Preferred's day-
11 to-day affairs was of concern to the
12 Commission according to the order to show
13 cause is that both Mr. Waugh and Mr. Bishop
14 have previously acquired felony convictions.
15 For Mr. Waugh that was in the form of
16 securities fraud, and for Mr. Bishop, that was
17 in the form of tax evasion.

18 JUDGE SIPPEL: All right.

19 MS. SINGH: It is also alleged that
20 Preferred failed to reveal Mr. Waugh as a real
21 party in interest in its auction filings,
22 which I'll describe in a minute.

1 JUDGE SIPPEL: Mr. Waugh's real
2 party in interest, is that what you said?

3 MS. SINGH: According to the
4 allegations in the order to show cause?

5 JUDGE SIPPEL: Correct.

6 MS. SINGH: Yes, your Honor.

7 JUDGE SIPPEL: Okay. All right.

8 MS. SINGH: And so there's this one
9 group of issues that we're talking about that
10 concerns unauthorized transfer of control and
11 undisclosed real party in interest as alleged
12 in this order to show cause. And there is
13 also a second grouping of issues that talks
14 about misrepresentation and lack of candor.

15 These are really in two separate
16 directions. One concerns potential
17 misrepresentation and lack of candor
18 concerning the structure of Preferred as the
19 licensee and whether in fact the referenced
20 stock transfers or transfer over its day-to-
21 day control of affairs took place.

22 There's a second set of potential

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1 misrepresentations and lack of candor that
2 concern statements that Preferred made in
3 currently pending applications for waiver of
4 the construction deadlines applicable to
5 Preferred's licenses.

6 JUDGE SIPPEL: Statements and
7 pending applications on status of
8 construction.

9 MS. SINGH: Yes, your Honor.

10 JUDGE SIPPEL: And these are made
11 by who?

12 MS. SINGH: Preferred Communication
13 Systems, Inc. and Preferred Acquisitions, Inc.
14 on behalf of Preferred Acquisitions, Inc. in
15 seeking waiver of deadlines for construction
16 applicable to Preferred Acquisitions, Inc.'s
17 licenses.

18 JUDGE SIPPEL: And who were the
19 individuals, or individual, that were involved
20 in making those statements?

21 MS. SINGH: Mr. Austin, your Honor.

22 JUDGE SIPPEL: Okay. Again, Mr.

1 Austin, this is just an allegation and I'm
2 just simply getting briefed. You know there
3 was another, another judgment on this case
4 when it was initiated, so it's not that I'm
5 coming into the case now, but I, this is
6 helpful to me.

7 And, Mr. Silva, I believe that
8 this is you, sir?

9 MR. SILVA: Yes, I'm sorry, your
10 Honor.

11 JUDGE SIPPEL: That's all right.
12 Traffic is traffic, we can't -- let's just be
13 happy that this is not Florence or Rome. We'd
14 have you for lunch maybe.

15 Would you want to -- we were
16 noticing appearances on the record just, you
17 know, because it's been a while since we've
18 gotten together. Could you just indicate who
19 you are and who you're representing, sir?

20 MR. SILVA: Yes.

21 JUDGE SIPPEL: For the record, just
22 for the record.

1 MR. SILVA: William Silva,
2 representing Pendleton C. Waugh, W-A-U-G-H.

3 JUDGE SIPPEL: And where we stand
4 right now is Ms. Singh is just giving a, for
5 my benefit, just giving a running, a rundown
6 on what has transpired leading up to today.
7 And we're at the point where she has just
8 indicated that there are two misrepresentation
9 issues in the case.

10 Your client was mentioned before
11 that as being a subject of a real party in
12 interest allegation and then
13 misrepresentation, alleged misrepresentations.
14 We thought that those are attributed primarily
15 to Mr. Austin. Is that correct, allegedly?

16 MS. SINGH: Yes, your Honor,
17 allegedly. And just for the benefit of
18 counsel for Mr. Waugh that has just entered
19 this proceeding, as your Honor asked the
20 Bureau if there was any objective that we
21 could accomplish while Mr. Silva is in route,
22 we asked if your Honor would like a background

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1 of the order to show cause and how events
2 transpired to lead us to appear before you
3 today, and you requested that, so that's what
4 I'm providing, just a rundown of what's in the
5 order to show cause. I'm not making any
6 substantive arguments concerning the
7 allegations that are referenced therein.

8 JUDGE SIPPEL: That's very well
9 stated.

10 MS. SINGH: Thank you, your Honor.
11 I think where we left off, we were talking
12 about the, the second group of allegations
13 that the order to show cause concerns. Now,
14 for Mr. Silva's benefit, the first that we
15 discussed was unauthorized transfer of control
16 and undisclosed real party in interest.

17 And we did mention that the two
18 individuals involved in that set of
19 allegations, Mr. Waugh and Mr. Bishop, do
20 possess felony convictions according to the
21 allegations in the order to show cause.
22 Additionally, we discussed --

1 JUDGE SIPPEL: They're not
2 incarcerated now, are they?

3 MS. SINGH: No, that's correct,
4 your Honor. They're not incarcerated at this
5 time as far as we understand it.

6 JUDGE SIPPEL: Hold on just a
7 second. Oh, yes, I'm sorry, Mr. Silva. I am
8 on the speaker phone and we have on the
9 speaker phone Mr. Austin and Mr. Guskey.
10 They're talking to us. They're participating
11 from the west coast.

12 MR. SILVA: Okay.

13 JUDGE SIPPEL: That was with my
14 authorization. It happened very quickly.
15 Well, that seems to be the way things are
16 happening.

17 MR. SILVA: Your Honor, may I ask
18 in what capacity is Mr. Guskey participating?
19 As a stockholder or --

20 JUDGE SIPPEL: As a principal he
21 told me.

22 MR. GUSKEY: This is Mr. Guskey,

1 the vice president of Preferred
2 Communications.

3 JUDGE SIPPEL: And the same with
4 respect to Mr. Austin. -

5 MR. SILVA: Yes, I know about Mr.
6 Austin, yes.

7 JUDGE SIPPEL: These are
8 principals. Well, yes, but I want you to be
9 sure you understand where the state of the
10 record is as of now. All right.

11 You may continue, ma'am.

12 MS. SINGH: Your Honor, just
13 getting back to the second grouping of issues
14 for your and for Mr. Silva's benefit. We were
15 describing that there were two potential sets
16 of misrepresentation and lack of candor
17 allegations in the record. One concerning the
18 pending waiver applications that we just
19 discussed, and one, of course, concerning
20 corporate structure of Preferred.

21 The third grouping of issues
22 relates to miscellaneous failure to file

1 information before the Commission. This
2 pertains in part to the pending application
3 for a waiver that I just discussed for you,
4 and also in part to portions of responses to
5 letters of inquiry that the Enforcement Bureau
6 sent to Preferred before this case was
7 designated for a hearing.

8 JUDGE SIPPEL: Did you mention an
9 individual or did you mention the company with
10 respect to those allegations?

11 MS. SINGH: With respect to those
12 allegations, your Honor, it is Preferred, so
13 it is the two licensees that are designated
14 for hearing.

15 JUDGE SIPPEL: So it's the failure
16 to file information regarding and requested
17 waiver and answers to a request for
18 information from the Bureau.

19 MS. SINGH: Yes, your Honor. And
20 just to clarify for the record as to the
21 responses to letters of inquiry, it was only
22 a portion of the responses, which the

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1 companies had promised to provide the Bureau
2 and did not prior to designation of the
3 hearing.

4 JUDGE SIPPEL: All right. So is
5 this -- this is in the nature of the second
6 leg of that, then the responses, they're
7 incomplete. It's not -- you're not alleging
8 that, what was, what was disclosed in the
9 responses was false or misleading. You're
10 alleging that you had requested additional --
11 you had, that the response was not made fully
12 and completely.

13 MS. SINGH: Actually, your Honor, I
14 am discussing that the order to show cause
15 alleges both of those things. It was --

16 JUDGE SIPPEL: Both
17 misrepresentation and failure to produce.

18 MS. SINGH: Yes, that's correct,
19 your Honor, and I'm nodding my head in
20 remembering to reflect that for both the court
21 reporter and the parties on the line.

22 JUDGE SIPPEL: Thank you.

1 MS. SINGH: And the fourth and
2 final grouping of allegations that this
3 hearing proceeding concerns is whether the
4 character qualifications of the named
5 individuals, Pendleton Waugh and Jay Bishop,
6 as well as any character qualifications of the
7 licensees, Preferred Communication Systems,
8 Inc. and Preferred Acquisitions, Inc., and the
9 principal, Charles Austin, whether those
10 qualifications remain fit for these entities
11 or these individuals to hold Commission
12 licenses.

13 This becomes relevant in the
14 following way: Mr. Bishop --

15 JUDGE SIPPEL: Well, let me be sure
16 I get these names correct.

17 MS. SINGH: Of course, please.

18 JUDGE SIPPEL: This has to -- the
19 character qualifications has to go with Mr.
20 Austin and Mr. Waugh, Mr. Bishop?

21 MS. SINGH: Yes, That's correct,
22 your Honor.

1 JUDGE SIPPEL: Anybody else? Is
2 the three?

3 MS. SINGH: That's the three named
4 individuals in the caption of the order to
5 show cause and then there are, of course, the
6 two licensees that are named in that same
7 caption being Preferred Communication Systems,
8 Inc. and --

9 JUDGE SIPPEL: So the character,
10 the qualifications of character goes, goes to
11 the corporations too?

12 MS. SINGH: Yes, that's correct
13 because they are the corporations that in fact
14 are the licensees of record for the licenses
15 that were designated for revocation.

16 JUDGE SIPPEL: And what about the
17 shareholders? This would not impact
18 shareholders, except for the principals that
19 you've mentioned.

20 MS. SINGH: Well, in so far as they
21 own any interest in the stock of the companies
22 that are licensees, I suppose that it would

1 impact them, but in terms of the misconduct
2 that's alleged in the order, or in terms of
3 the character qualifications that the order to
4 show cause itself designated, it is the five
5 parties that are named in the caption of the
6 order.

7 So for the record, that, those are .
8 the named individuals, Charles M. Austin, --

9 JUDGE SIPPEL: Right.

10 MS. SINGH: Pendleton C. Waugh, --

11 JUDGE SIPPEL: Right.

12 MS. SINGH: Jay R. Bishop, --

13 JUDGE SIPPEL: Right.

14 MS. SINGH: -- as well as the two
15 corporate licensees, Preferred Communication
16 Systems, Inc. and Preferred Acquisitions, Inc.

17 JUDGE SIPPEL: Okay. I have it,
18 okay.

19 MS. SINGH: Okay, thank you, your
20 Honor.

21 JUDGE SIPPEL: That's five, okay.

22 MS. SINGH: Yes, that's correct,